Case Law Update 2021 Edition

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Discussion Points

- Constitutionality
- Prevailing Factor as it Relates to Secondary Injuries
- Application of K.S.A. 44-523(f)
- Subrogation Credits
- Statutory Employer
- Psychological Injuries
- Appellate Review of Impairments
- Work Disability and Voluntary Resignations
- Drug Testing
- Heart Amendment

Johnson v. U.S. Foods Service, 312 Kan. 597, 478 P.3d 776 (2021)

Constitutionality of the Kansas Workers Compensation Act

Appeal from Johnson v. U.S. Foods I, 56 Kan. App. 2d 232, 427 P.3d 996 (Kan. App. 2018).

- Court of Appeals found use of the *6th Edition* to be unconstitutional. Decision was appealed. Supreme Court disagreed.
- Essentially, the Court held that because the statute was not a mandate, there was a constitutional reading of 44-410e(a)(2)(B).
- This reading swings on the inclusion of the language “based on” in the statute, which allows the *6th Edition* to serve as a “standard starting point” with impairments still having to be established by competent medical evidence.
- “[The statute] has never dictated that the functional impairment is set by the guides. This has not changed. The key fact-percentage of functional impairment-must always be proved by competent medical evidence.”

Subsequent Decisions

- *Zimero v. Tyson Fresh Meats,* ___ Kan. App. 2d ___, 490 P.3d 86 (Kan. App. 2021) (unpublished decision).
  - Found that any reference to the 4th Edition is irrelevant after *Johnson II*. The ratings may deviate from the 6th Edition, but you cannot choose between the Editions.
- *Guzzo v. Heartland Innovations,* ___ Kan. App. 2d ___, 490 P.3d 85 (Kan. App. 2021) (unpublished decision)
  - Claimant needs to formally request a stay in the proceeds, the Board cannot act *sua sponte* to raise non-jurisdictional issues.
  - However, even if addressed, the court found the language of *Johnson II* to be dispositive on the issue, referring to the "starting point" language.
- *Hopkins v. Great Plains Manufacturing*, ___ Kan. App. 2d ___, 485 P.3d 1210 (Kan. App. 2021)
  - At ALJ hearing, claimant showed no permanency and was only awarded the benefits previously provided. Board affirmed.
  - Parties filed stipulated facts with district court. Employer filed summary judgment motion. Claimant responded alleging denial of remedy guaranteed under the Kansas Bill of Rights.
  - Court ruled that if the claimant had established the benefits *could* have been recoverable if the evidentiary requirements of the prevailing statute were meant. Here, they weren't. Heightened requirements to obtain benefits aren't necessarily a denial of those benefits.

Van Horn v. Blue Sky Satellite Services, ___ Kan. App. 2d ___, ___ P.3d ___ (Kan. App. 2021) (unpublished decision.)

- First, claimant asked the court to address the application of the 6th Edition to scheduled injuries and the constitutionality of 44-510d(b)(23-24), but found the issue was not briefed adequately and declined to address it.
- Second, the claimant argued that any rating under the 6th Edition lacked evidentiary foundation and asked the court to remand the case with instructions to consider the 4th Edition. The court declined the constitutionality argument, and therefore was unable to grant the remand.
- Third, the court addressed whether the injury was a result of normal activities of day-to-day living. The court found that ascending stairs with the increased weight of the tool belt was sufficient competent evidence to show the claimant was in furtherance of his employment duties citing *Munoz*.

Van Horn continued

- Fourth, the respondent contended that the claimant's award for future medical was not supported by the evidence. The respondent's expert report asserted that the claimant did not suffer an injury at all, but needed medical treatment for an underlying condition. The court found that the claimant suffered an injury, and that finding gave credence to the claimant's expert. Therefore, the finding granting future medical was supported and affirmed.
- Last, respondent challenged the award of past due medical benefits. Citing to K.S.A. 44-510j(h), the court found that the claimant contacted the respondent immediately about the injury, and again when he filed an application for a preliminary hearing, and again when he applied for a preliminary hearing. The court held that the claimant had waited a month and a half, and did not require he wait longer. The award of past-due benefits was affirmed.

Takeaways

- 6th Edition is still viable, but as a guideline and is not mandated top be followed.
- Brief and assert the constitutional challenges.
- Scheduled injury statute is different, and has not been addressed yet. Although, the *irrelevant* language used in *Zimero* may close the door.
- The analysis of K.S.A. 44-510j(h) in *Van Horn* may be helpful in claimant's seeking treatment.

Ocon v. Seaboard Corp., ___ Kan. App. 2d ___, 473 P.3d 962 (Kan. App. 2021).

K.S.A. § 44-523(f): Application of Dismissal Provision

2006 and 2011 Versions of the Statute

K.S.A. Supp. 2006 44-523(f)

Any claim that has not proceeded to final hearing, a settlement hearing, or an agreed award under the workers compensation act within ***five years from the date of filing an application for hearing*** … shall be dismissed by the administrative law judge for lack of prosecution. The administrative law judge may grant an extension for good cause shown, which shall be conclusively presumed in the event that the claimant has not reached maximum medical improvement, provided such motion to extend is filed prior to the five year limitation provided for herein.

K.S.A. Supp. 2011 44-523(f)

In any claim that has not proceeded to a regular hearing, a settlement hearing, or an agreed award under the workers compensation act within ***three years from the date of filing an application for hearing*** … the employer shall be permitted to file with the division an application for dismissal based on lack of prosecution. The matter shall be set for hearing with notice to the claimant's attorney, if the claimant is represented, or to the claimant's last known address. The administrative law judge may grant an extension for good cause shown, which shall be conclusively presumed in the event that the claimant has not reached maximum medical improvement, provided such motion to extend is filed prior to the three year limitation provided for herein.

Ocon v. Seaboard Corp.

- May 1, 2015, 8:05 PM: Claimant's attorney filed an application for hearing by fax with the Division of Workers Compensation. The application is file stamped May 4, 2015.
- Several preliminary hearings were held, but no regular hearing or settlement hearing.
- May 3, 2018: a request for an extension is filed by fax with the Division of Workers Compensation by the claimant's attorney. File stamp says May 4, 2018.
- A month later, respondent filed for dismissal under 44-523(f). ALJ granted, Board affirmed.
- Claimant argued that application for hearing was faxed after 5:00 PM, and should be seen as filed on the next business day, which would have been Monday, May 4, 2015 citing K.A.R. 51-17-2(g) and (g)(6), which deferred personal service to the next day. Court found that failed because 1) an application was not personal service, and 2) there is no allowance for holidays/weekends.
- Claimant attempted to give legal effect to the file stamp, but it only showed when the parties to the claim were served, not when the agency received it, and it did not save the claim.
- Claimant argued a conflict between 44-534(b) time limitations and 44-523(f)(1). The court found these function independently and did not conflict. Interestingly, there is an argument that the claimant may be able to simply file a new applications, but it was not addressed.

Takeaways

- Dismissal is certainly a possibility if caution is not taken.
- Settlement negotiations do not provide a get-out-of-jail-free card.
- Equitable estoppel to bar application of the statute of limitations requires an element of deception.
- The statute contains no limitation on when the motion can be filed. Therefore, best practice is to file the motion with filing of the Application for Hearing.
- Even if a Motion for Extension is filed, Respondents should seek an order with a firm deadline.

Hawkins v. Southwest KS Co-op Serv., 313 Kan. 100, P.3d 236 (2021)

Subrogation Credits

Hawkins v. Southwest KS Co-Op

- Claimant sustained significant injuries when he fell from a bucket suspended 65 feet in the air because the hydraulics on a boom crane failed. Comp benefits were procured, including a permanent total determination.
- Claimant sued three entities for negligence. JLG, Western Steel, and United Rental. Western paid out $925k for loss of consortium and loss of service of a spouse. JLG paid out $1.5m for economic and non-economic damages. United went to trial.
- Jury did not give the plaintiff additional collectible damages, but it apportioned fault, 75% to Western and 25% to the respondent. After the verdict, Southwest sought a declaration of its subrogation rights pursuant to 44-504.
- ALJ used the amount of settlement paid by JLG only when calculating subrogation and concluded that Southwest had a lien of $477,460.34 against benefits paid and $272,539.66 against future benefits. The Board affirmed

Hawkins continued

- Court found that 44-504(b) requires a reduction for the employer's apportionment of fault, but is silent on the exact way to determine it. The jury finding was seen as competent evidence, and reliance upon it was appropriate.
- The extent of the respondent's lien should be calculated on the amount the claimant actually recovered, not what the jury awarded. The 25% fault deducted from the $1.5m JLG settlement was appropriate.
- The future payment's referenced in 44-504(b) refers to payments made after the date of recovery. The respondent was entitled to a credit against payment of future workers compensation benefits equal to any damages payments the claimant received under the JLG settlement.

Takeaways

- Reliance upon a jury determination of fault is appropriate for the purposes of attributing fault under 44-504(b)
- The extent of the lien will be based upon the amount actually recovered by the claimant, not the jury award.
- Respondent will still be entitled to future payments made after the date of recovery.

White v. RGV Pizza Hut, ___ Kan. App. 2d ___, 487 P.3d 383 (Kan. App. 2021)

Application of Statutory Employer

White v. RGV Pizza Hut, ___ Kan. App. 2d ___, 487 P.3d 383 (Kan. App. 2021)

- RGV is a franchiser with 45 Pizza Huts in Texas, and only in Texas.
- Pizza Huts must be ran in strict conformity with a franchiser agreement, including maintenance of the roofs.
- RGV contracted semi-regularly with Shomberg, a Kansas company, to clean, repair and paint the roofs of the Pizza Huts.
- Claimant injured while working in Texas, Shomberg not available as a source of workers compensation insurance. Main issue is whether RGV. Could be substituted as a statutory employer.
- Used *Hanna* test: 1) Is the subcontracted work an inherent and integral part of the contractor's business? 2) Would the subcontracted work ordinarily be done by the contractor's employees?
- Court found that RGV was not in the business of selling pizzas, but in the business of selling *Pizza Hut* pizzas. The "exhaustive homogeneity" of the franchise invites people familiar with it, and maintaining the roofs are part and parcel to that.

White continued

- Respondent argued no personal jurisdiction because it lacks the sufficient minimal contacts with Kansas to be held to answer in a judicial proceeding here.
- The court examined the contractual relationship between the respondent and Shomberg. It found:
  - The respondent sought out Shomberg for a contractual relationship.
  - The respondent and Shomberg indeed had a contractual relationship.
  - The claimant's injury was related to that contractual relationship.
  - RGV knew or should have known there was a risk with the work, but never asked for valid workers compensation coverage proof from Shomberg.
  - Because of the above, the court held that the respondent had minimum contacts sufficient for jurisdiction.
- Interesting note: Court upheld a 44-523(f) based solely on the arguments of the claimant's counsel, noting no objection by the respondent. *See McQuitty v. City of Garden City*, CS-00-0383-830, 2021 KS Wrk. Comp. LEXIS 62 (KWCAB, July 2021)

Takeaways

- Strict contractual requirements that must be met by employers may be enough to fulfill the *Hanna* test.
- Contractual relationship that was sought out from an out of state company be enough to meet the minimum contacts requirement for jurisdiction.
- If there is an objection to attorney arguments being asserted on the record, that objection must be stated.

Hughes v. City of Hutchinson, ___ Kan. App. 2d ___, 468 P.3d 348 (Kan. App. 2021)

Psychological Injuries

Hughes v. City of Hutchinson, ___ Kan. App. 2d. ___, 468 P.3d 348 (Kan. App. 2021)

- Claimant injured in 2016 his left shoulder while working for the respondent. There was a claim to both shoulders, but IME ruled out right shoulder in 2016.
- In 2018, claimant sought out a psychologist (Barnett) to evaluate the claimant, who opined that because of ongoing restriction, chronic pain, poor sleep, etc. the claimant was unemployable.
- A second psychologist (Allen) evaluated the claimant and found he suffered from a major depressive disorder connected to the work injury and assigned a 10% impairment for this.
- ALJ awarded 13% to the left shoulder, nothing to the right shoulder, and nothing for psychological injuries. Claimant appealed.

Hughes continued

- The Court upheld the Board's decision because:
  - The claimant's hired expert was the sole professional to diagnose claimant.
  - The claimant did not seek opinions from the treating physicians regarding his depression.
  - The claimant only consulted the hired psychologist 29 months after the injury.
  - The claimant did not seek treatment through a preliminary hearing.
  - The claimant never testified before an ALJ about these symptoms.

Takeaways

- To claim psychological injuries, you need more than just a report. There needs to be a genuine effort to seek treatment.
- Make sure that the claimant testifies about the injuries before the ALJ so that there is record reporting the symptoms outside of the hired witnesses.
- Claimant should be attempting to talk to the doctor about psychological injuries while treating, even if the treater does not treat them.

Pile v. Textron Aviation, ____ Kan. App. 2d. ____, ____ P.3d ____ (Kan. App. 2021)

Appellate Review on Impairment Ratings

Pile v. Textron Aviation, ___ Kan. App. 2d. ___, ___ P.3d ___ (Kan. App. 2021) (unpublished decision)

- Claimant worked for the respondent in a position that required the consistent use of power tools. Clamant complained of bilateral hand pain, confirmed by NCT testing.
- Treated with Dr. Gwyn. Surgery on right hand, conservative treatment on the left hand. Released with a 3% to the right hand, and a 0% to the left hand.
- Claimant continued to have symptoms bilaterally, but turned down additional surgeries. Melhorn rated 2% to right, 0% to the left. Murati rated 8% to each upper extremity.
- Sent to Tilghman on a court-ordered IME. Rated 5% right upper extremity, and noted mild left CTS, but no rating.
- ALJ awarded 5% right upper extremity impairment. Board found 7% to the right upper extremity and 4% left upper extremity impairment. Respondent appealed.

Pile continued

- Respondent asserted that the award from the Board was not supported by substantial competent evidence, specifically challenging the impairment to the left upper extremity.
- The court found the Board had carefully reviewed the evidence, specifically noting that Gwyn had recognized symptoms on the left at the outset of treatment and treated it, albeit conservatively.
- It also found Melhorn had also diagnosed left CTS, although he gave the condition no impairment.
- Last, there was a valid NCT showing mild CTS symptoms.
- Because of this, the court found that the average of the 0% and Murati's 8% was supported and affirmed the Board's Order.

Takeaways

- Noted conditions and impairments in the medical records are good evidence that there ay be impairment to those areas.
- The court will not re-weight the evidence, but only looks to insure that the Board’s decision in factual matters is supported by the evidence.
- Best practice is to have a thorough record review and advise the claimant to get all impairments in front of a doctor.

Frank v. W.E.B. Enterprises, ___ Kan. App. 2d ___, 485 P.3d 729 (Kan. App. 2021)

Standard of Review

Frank v. W.E.B. Enterprises, ___ Kan. App. 2d ___, 485 P.3d 729 (Kan. App. 2021)

- Claimant fell off a ladder hanging Christmas lights on a house while working for Keith.
- Keith had at least three companies:
  - Home of the Green Team, LLC for lawn mowing
  - Seasonal Lights for Christmas lights
  - W.E.B. Enterprises, LLC which is an umbrella LLC
- ALJ Found that W.E.B Enterprises, was an umbrella LLC and that both Seasonal Lights and Home of the Green Team, LLC were d/b/a's that were used by it. The ALJ found the Kansas Workers Compensation Fund liable because, shockingly, Keith did not have comp insurance.
- The Fund appealed to the Board, and the Board overturned the award, finding that the there was no link between Seasonal Lighting and W.E.B. Enterprises except that Keith was involved in both. Claimant appealed.
- The court found that the decision of the Board was based on substantial competent evidence and a thorough review of the record, and because the it does not reweigh evidence, it could not overturn the decision. The Board Order was affirmed.

Woessner v. Labor Max Staffing, No. 119,087, 2020 WL 5083418 (Kan. Aug. 28, 2020)

Drug Defense & Clear and Convincing Standard

Drug Defense and Admissibility of Test Results

K.S.A. § 44-501(b)(1)(A) The employer shall not be liable under the workers compensation act where the injury, disability or death was contributed to by the employee's use or consumption of alcohol or any drugs, chemicals or any other compounds or substances, including, but not limited to, any drugs or medications which are available to the public without a prescription from a health care provider, prescription drugs or medications, any form or type of narcotic drugs, marijuana, stimulants, depressants or hallucinogens.

- The results of the test are admissible if:
  - As a result of an employer mandated drug testing policy, in place in writing prior to the date of accident or injury, requiring any worker to submit to testing for drugs or alcohol;
  - during an autopsy or in the normal course of medical treatment for reasons related to the health and welfare of the injured worker and not at the direction of the employer;
  - the worker, prior to the date and time of the accident or injury, gave written consent to the employer that the worker would voluntarily submit to a chemical test for drugs or alcohol following any accident or injury;
  - the worker voluntarily agrees to submit to a chemical test for drugs or alcohol following any accident or injury; or
  - as a result of federal or state law or a federal or state rule or regulation having the force and effect of law requiring a post-injury testing program and such required program was properly implemented at the time of testing.

Woessner v. Lab. Max Staffing, (Kan. 2020)

- Claimant sustained a workplace injury, which resulted in his death. His wife sought death benefits under the Kansas Workers Compensation Act.
- During medical treatment, a urine sample was obtained and tested for presence of illegal narcotics.
- The sample was sent to Lab Corp. The results revealed the presence of marijuana metabolites.
- At the Regular Hearing, respondent introduced an affidavit and business records from the hospital and Lab Corp. regarding the collection and testing of the sample. The affidavits established the chain of custody of the sample, the licensure of the lab, and the GC/MS testing.

Woessner continued

- Respondent deposed one of claimant's treating doctors in the ER, who testified the drug test was completed because claimant was incapacitated and to ensure the best medical treatment.
- Respondent also deposed the hospital's lab director. She explained the chain of custody requirements for a medical versus a legal drug test. Based upon her review of the records, she testified the requirements for a medical test were complied with and the test was not compromised.
- Finally, the respondent deposed a toxicologist. He opined on the concentration of THC metabolites in claimant's urine and the claimant's last use of marijuana.
- The claimant presented the testimony of a co-worker who expressed his opinion the claimant did not appear impaired.

Woessner continued

- The ALJ admitted the test, concluded claimant failed to overcome the presumption of impairment, and denied claimant's right to benefits.
- On appeal, the Appeals Board reversed the ALJ's decision.
  - The Board determined the sample was collected by the employer, because it had requested the hospital to collect the sample.
  - It ruled the respondent was requires to establish the chain of custody beyond a reasonable doubt, which it had not done.
  - It applied K.A.R. 51-3-5a, which requires the testimonial support for the admission of a report, and because no one from Lab Corp had testified, it denied admission of the report.
  - Finally, it testified the testimony of the claimant's co-worker constituted clear and convincing evidence overcoming the statutory presumption of impairment.

Woessner continued

- The Court of Appeals reversed the decision of the Board.
  - It ruled K.S.A. § 44-501(b)(3) does not apply, because the sample was collected by the hospital not the employer. K.S.A. § 44-501(b)(3) only applies to samples collected by employers.
  - K.A.R. 51-3-5a, which prohibits the admission into evidence for purposes of a final Award medical reports introduced at a preliminary hearing without subsequent testimonial support, does not apply to lab test first introduced at a Regular Hearing.
  - Hearsay is most certainly allowed in workers compensation proceeds, but its credibility must be weighed by the ALJ and Board. The Board erred when it excluded the lab tests.
  - The Board's reliance upon the co-workers testimony, without a more detailed explanation, was not sufficient to support its conclusion claimant had satisfied the clear and convincing standard required by the statute.

Woessner continued

- The Supreme Court reversed the Court of Appeals but upheld admissibility of the sample.
  - K.S.A. § 44-501(b)(3) only applies to samples collected by employers.
  - K.A.R. 51-3-5a does not apply to lab test first introduced at a Regular Hearing.
  - Hearsay is allowed in workers compensation proceeds, but its credibility must be weighed by the ALJ and Board. Sufficient evidence indicated the lab tests were reliable.
    - Proof beyond-a-reasonable-doubt is not required to demonstrate chain of custody.
  - Co-worker's testimony that Woessner did not appear to be impaired was sufficient to overcome the presumption that impairment contributed to Woessner's accident by clear and convincing evidence.
    - Board's Award affirmed

Takeaways

- Samples taken independent of the employer are not subject to K.S.A. § 44-501(b)(3).
- Chain of custody of drug samples does not need to be established by proof "beyond-a-reasonable-doubt."
  - Rather, hearsay evidence of a reliable chain of custody is weighed by the ALJ and Board to determine credibility.
- Credible co-worker testimony that claimant did not appear impaired at or around the time of accident may be enough to prove the claimant's impairment did not contribute to his accident by clear and convincing evidence.

Jennings v. T. Rowe Pipe, LLC, ___ Kan. App. 2d ___, 475 P.3d 385 (Kan. App. 2020)

Standard of Appellate Review

T. Rowe Pipe

- Claimant was working for the respondent company when he went into a confined area to test a pipe and when he sat up, he felt a loud pop in his left hip.
- Over the course of the next two years, the claimant saw a number of doctors, culminating in the recommendation that he receive a total hip replacement.
- Claimant filed an application for a hearing. The ALJ concluded that the work accident was not the prevailing factor based upon the court-ordered IME doctor's report.
- Claimant appealed and the Board agreed with the ALJ's ruling, but modified the award to reimburse the claimant for $400 of unauthorized medical expense. Respondent appealed.
- The Board concluded that Jennings had suffered a temporary injury during the work accident and received a Toradol shot based off of that temporary injury. This allowed the court to award the $400. The Board order was affirmed.

Langvardt v. Innovative Livestock Services & Kansas Livestock Association, ___ Kan. App. 2d. ____, 474 P.3d 810 (Kan. App. 2020)

Validity of Settlement Hearing and Standard of Review

Langvardt v. Innovative Livestock Servs.

- Claimant suffered a bilateral upper extremity injury on October 15, 2018. He was treated by Estivo and released with a rating of 10% to the left upper extremity and 4% to the right upper extremity.
- A telephonic settlement hearing was scheduled on May 17, 2019. Within 24 hours, the claimant informed the respondent company he no longer wanted to accept the hearing.
- The Board issued an Order stating the settlement was not in the best interest of the claimant because 1) the amount was less than the BAW rating of 8%, 2) the claimant may have a work disability, and 3) the fact that the claimant was still in the hospital when he did the hearing should have raised red flags regarding his judgment.
- Respondent petitioned the court for review. The court found it lacked jurisdiction as the remand for further proceeding was not an appeal of a final order. In dicta, it stated that had the settlement been upheld, then it would have had jurisdiction to review the case.

Williams v. Wellco Tank Trucks, ___ Kan. App. 2d ___, ___ P.3d ___, (Kan. App. 2021)

Work Disability and Wage Loss

Williams v. Wellco Tank Trucks

- Claimant was injured while securing a locomotive engine onto a flat bed truck. Claimant eventually underwent a cervical fusion and was released from care with permanent restrictions and a 25% BAW rating. Claimant had an average weekly wage of $745.45.
- The claimant was terminated from the respondent company, but secured employment for another company, Long Trucking, for $16 per hour. The work was varied according to season and weather.
- In 2019, the claimant had an 11 day long federal contract for assisting in disaster relief for a flood. He was paid at a much higher rate pursuant to the federal contract. The claimant testified that while working disaster relief was not necessarily normal, federal contracts were common and generally paid at the higher rate.
- Including these earning on the post-accident weekly wage would prevent the claimant from reaching a work disability, as he would only have a 9% loss in income. Excluding them would make it 14%. The ALJ and Board both found a 9% wage loss and denied a work disability. Claimant appealed.

Williams v. Wellco Tank Trucks continued

- First, the court did not find ambiguity in the language of 44-510e(a)(2)(E) when it defined wage loss based upon the claimant's earning capacity.
- Second, the claimant argued the position with Long Trucking was an accommodated position and not a true open position in the labor market. The court found that Long had hired the claimant without a pre-exisiting relationship and that claimant was hired with full knowledge of his restrictions. The argument failed.
- Third, the claimant asked the court to ignore the decision in *Graham v. Dokter Trucking Group,* 284 Kan. 547, 558, 161 P.3d 695 (2007) because it was written under the pre-2011 statute for wages. The Court declined and said *Graham* was still good precedent.
- Last, the claimant argued that the presumption was overcome with the exception of the outlier weeks the claimant worked under federal contract. Using *Graham* the court declined to exclude the pay, and hinted most earnings should be included, and affirmed the Board decision.

Larson v. Excel Industries, 59 Kan. App. 2d 583, 483 P.3d 1067 (Kan. App. 2021)

Heart Amendment

Larson v. Excel Industries

- The claimant suffered a fatal heart attack after returning from an out-of-town business trip in November 2016. Claimant was 61 years old and employed as a senior quality engineer.
- Earlier in 2016, the claimant suffered a heart attack while traveling for work. His boss at the time advised that he would no longer have to travel for work. Unfortunately, his boss was fired and he was eventually sent on a multi-day trip to Minnesota and Iowa.
- During the trip, there were weather delays that pushed their arrival back a day. The claimant did not have any medications to last him the extra day. After he landed back home in Wichita at 10:00PM a day late, he suffered a heart attack and passed away.
- The ALJ denied the claim, the Board affirmed. The widow sought review.

Larson continued

- The widow sought review alleging:
  - 1) The Board has misinterpreted the heart amendment, specifically the meaning of usual day-to-day work activities.
  - 2) Substantial evidence did not support the finding that the claimant was engaged in usual exertion.
  - 3) The Board erred when it declared that the external forces argument was moot.
- First, the court held that the Board had sufficient analysis to show that it did not misinterpret the statute.
- Second, despite the phone call in 2016 telling him he was no longer required to travel the court found that travel was still a normal part of the claimant's work. Further, the court used the testimony of the co-worker to find that this specific trip was in the usual course of employment for the claimant.
- Last, the court looked at whether the Board had erred by not analyzing whether external forces was a substantive causative factor in causing the injury. The court agreed, citing the two part test in *Mudd v. Neosho Medical Center,* that 1) there must have been a presence of substantial external forces in the working environment, and 2) there must be expert medical testimony that the external forces was a substantial causative factor in the injury.
- Ultimately, the court remanded it back to the Board to address the *Mudd* test and assess whether external forces caused the heart attack.